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To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

This memorandum contains an overview of a report released by the Legislative Analyst's Office titled: *Completing Juvenile Justice Realignment;* a pursuit of County position on legislation related to employee relations commissions; a change in County position on legislation regarding inverse condemnation actions; and the status of County advocacy legislation related to the commitment of juvenile sex offenders and energy efficiency programs.

Legislative Analyst's Office Report on Juvenile Justice Realignment

On February 15, 2012, the Legislative Analyst's Office (LAO) released its report titled: *Completing Juvenile Justice Realignment.* The LAO supports the Governor's FY 2012-13 Budget proposal to continue ongoing efforts to realign juvenile justice responsibilities from the State to counties. As proposed by the Governor, beginning January 1, 2013, the Division of Juvenile Justice (DJJ) would cease accepting new commitments and all serious youthful offenders would be supervised locally.

In its report, the LAO points to a number of factors that favor a shift of responsibility for serious juvenile offenders from the State to counties:

- 99 percent of the juvenile offenders are currently in county custody or under county supervision.

- Previous legislative efforts to realign juvenile offenders have been successful (sliding scale program; Youthful Offender Block Grant).

- Transfer of juvenile parolees to counties (Juvenile Re-Entry Grant Program).

- Estimated 4,500 empty juvenile offender beds available in the counties.

- Focusing responsibility for juvenile offenders at one level of government is better than having responsibility divided between the State and counties.

- Counties would have the flexibility to provide programs to fit local needs rather than having a one size fits all rules for State and local programs.

- Counties have been more successful than the State in coordinating juvenile offender supervision and programming.

- Placing juvenile offenders under local supervision places them closer to their families which is a factor in providing their successful rehabilitation.

While the LAO believes that a shift of responsibility to counties has merit on policy and fiscal grounds, it recommends that the Legislature adopt language to address its concerns with the Governor's proposal to:

- Require counties to house juveniles under 18 years old who are sentenced to State prison.

- Develop a funding methodology that would provide counties with incentives for innovation and efficiency.

- Develop a plan to ensure a smooth transition of juvenile offenders to counties.

- Provide ongoing State level oversight and technical assistance.

- Take measures to minimize a potential increase in juveniles being tried as adults.

The Legislative Analyst's Office's recommendations to provide additional operational flexibility to local governments in its operations would likely assist counties; however, it is offset by the additional duties and responsibilities which would be shifted from the State to the counties for these juveniles who are violent, serious, and sex offenders and who generally require more intensive supervision and services.

Further, the LAO's proposal to limit the number of juvenile cases referred to the adult courts may have the unintended consequence of providing an early release to serious and violent juvenile offenders. Under existing law, the State may hold a juvenile offender until age 25. County facilities may hold a juvenile offender until age 21. Should a juvenile's offense be so serious that it would warrant extended confinement beyond age 21, counties could not hold these offenders in a juvenile facility after age 21. The LAO's recommendation also would limit counties from filing a case in adult court for these offenders. As a result, it would require counties to release an offender who has failed to complete his/her rehabilitation and may continue to pose a danger to the community.

The entire LAO report may be accessed at www.lao.ca.gov.

Pursuit of County Position on Legislation

As reported in the February 7, 2012 Sacramento Update, the Chief Executive Office learned that a legislative proposal would be introduced which would severely limit the role of management in the County of Los Angeles and the City of Los Angeles employee relations commissions. At that time, we indicated that the Sacramento advocates would oppose the proposed legislation because it would remove County management's rights over the Commission's records, budget, and all employment issues related to its staff and contracted hearing officers while maintaining its responsibilities. The provisions of this legislative proposal have been included in AB 1659 (Butler).

AB 1659 (Butler), which as introduced on February 14, 2012 would specify that the employee relations commissions of the County of Los Angeles and the City of Los Angeles operate independent of County and City management and proposes additional requirements that: 1) authorizes the Commission, not County or City management, to serve as the custodian of records of the Commission; 2) once a budget is allocated, gives the Commission sole discretion on the allocation of funds; and 3) gives the Commission, and not County or City management, control over all employment issues related to its staff and contracted hearing officers. The bill also specifies that the commissions may not be funded within the same budget item that funds any other public office, department, or agency within the County or City.

Existing law charges the Public Employment Relations Board (PERB) with administering collective bargaining statutes covering employees of local public agencies, including cities, counties, and special districts under the Meyers-Milias-Brown Act. The law also establishes the PERB as the State agency that has the power and duty to investigate an

unfair labor practice charge and to determine whether the charge is justified and, if so, the appropriate remedy.

The law further specifies that, notwithstanding the powers and duties of PERB, the Employee Relations Commissions of the County of Los Angeles (ERCOM) and the City of Los Angeles shall have the power and responsibility to take actions on recognition of employee organizations, unit determinations, and orders as the employee relations commissions deem necessary, consistent with and pursuant to pertinent statutes.

AB 1659 would remove County and City management from any role in the administration of their respective employee relations commissions and would give ERCOM sole control over the allocation of funds in its budget, all employment issues related to its staff and hearing officers, and Commission records.

This bill conflicts with a number of County ordinances, and could create situations where it would be unclear which authority would prevail. For example, County Code Section 5.04.190 states that the County "*shall provide appropriate office facilities, reference periodicals and books, equipment and supplies for the commission and such staff as it may appoint.*" Under AB 1659, the County would be liable for providing ERCOM's operating budget, but would have no control over how ERCOM spends the funds. The County also could be obliged to appropriate whatever ERCOM requested as its budget, even though the request could be potentially excessive and/or at odds with the County's overall budget position.

With regard to employment, Civil Service Rules provide for competitive examinations for employment and provide appeal rights for employees who are harmed by management decisions. If ERCOM is granted sole responsibility for employment of its staff, it is possible that employees could be hired outside of existing procedures specified in Civil Service Rules. In addition, any ERCOM personnel appointments would be considered County employees, even though County management would have no role in selecting them and would be prohibited from taking disciplinary actions or removing staff for cause.

The Chief Executive Office opposes AB 1659 because it would remove County management's rights over the Commission's records, budget and all employment issues related to its staff and contracted hearing officers while maintaining its responsibilities. Therefore, consistent with existing Board policy to oppose any abridgement or elimination of the Board of Supervisors' powers and duties unless the change promotes a higher priority of the Board, **the Sacramento advocates will oppose AB 1659.**

AB 1659 is currently at the Assembly Desk. This measure may be heard in committee on or after March 15, 2012.

Change in County Position on Legislation

County-supported AB 328 (Smyth), which would apply the Doctrine of Comparative Fault to inverse condemnation actions and require a court or arbitrator to reduce the compensation to be paid to a plaintiff in an inverse condemnation proceeding in direct proportion to the percentage of fault to the damage or taking of property, was amended on January 24, 2012.

The January 24, 2012 amendments eliminate the application of specific provisions of Code of Civil Procedure Section 998 (CCP 998) to inverse condemnation actions, specifically, the amendments provide that if a statutory offer made by a defendant is not accepted by the plaintiff and a trial results in a defense verdict, the plaintiff shall not recover his or her post-offer costs and shall pay the defendant's costs from the time of the offer. In addition, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant. The amendments further provide that if a statutory offer made by a defendant is not accepted by the plaintiff and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her post-offer costs. The court or arbitrator shall not order the plaintiff to pay the defendant's costs from the time of the offer. In determining whether the plaintiff obtains a more favorable judgment, the court or arbitrator shall exclude the post-offer costs. The rest of the provisions in the bill remain the same.

According to the Department of Public Works (DPW) and County Counsel, the amendments have weakened the language by proposing that CCP 998 apply to a public agency defendant in inverse condemnation actions, if the agency obtains a defense verdict at trial. The earlier version of AB 328 provided that CCP 998 would apply to inverse condemnation actions as it does in non-inverse condemnation actions, which would allow a public agency defendant to be able to obtain post-offer costs including, at the discretion of the Court, reasonable costs necessary for trial or arbitration, if the plaintiff fails to obtain a more favorable verdict than the offer that was initially made.

The Department of Public Works and County Counsel continue to support the objectives of the bill which would apply the Doctrine of Comparative Fault to inverse condemnation actions. However, based on the recent amendments, DPW and County Counsel recommend a change from support to support and amend position on this measure to restore provisions in the previous version consistent with existing Board policy to support proposals to mitigate the effects of liability upon public entities by applying

the Doctrine of Comparative Fault to inverse condemnation actions. Therefore, **Sacramento advocates will support AB 328 and request that it be amended to its previous version.**

AB 328 is sponsored by the Los Angeles City Attorney's Office. This measure is referred to the Senate Judiciary Committee.

Status of County-Advocacy Legislation

County-Supported AB 324 (Buchanan), which would expand the population of individuals who may be committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities to include youth who have been found to have committed a specified sex offense, among other provisions, was heard on Assembly Concurrence and passed by a vote of 66 to 2 on February 23, 2012. The measure now proceeds to the Governor.

County-supported AB 1124 (Skinner), which would state legislative intent to qualify low-income households for financial assistance under the Low-Income Energy Efficiency Program for repairs or replacements of furnaces or water heating systems in multifamily buildings, was amended on January 13, 2012.

The January 13, 2012 amendments would require the Public Utilities Commission (PUC), in its review of the energy efficiency programs of electrical corporations and gas corporations, to ensure compliance with the following principles:

- Achieve maximum energy savings for all customer classes by adopting whole building performance-based approaches.

- Maximize opportunities of leveraging private capital by increasing and streamlining access to on-bill repayment programs without increasing utility costs.

- Encourage job creation and training opportunities with an emphasis on skilled occupations necessary for installation of highly efficient energy savings measures.

- Create a single point of contact to coordinate access to energy efficiency programs for prospective customers using streamlined and simple procedures for determining property-level program enrollment and customer eligibility as well as encouraging customer participation.

- Provide equivalent funding and comparable measures for all eligible customers within the energy efficiency programs, particularly those customers that are more difficult to reach and have not yet been served by the programs, including small businesses, renters, multifamily renters, persons with disabilities, and those located in remote areas.

The Community Development Commission (CDC) indicates that the amendments to AB 1124 have no impact on CDC; therefore, CDC does not recommend a position on this measure.

According to the Internal Services Department (ISD), the energy efficiency programs of electrical and gas corporations in California have a long history of overall success in promoting and implementing renewable resources and energy efficiency. ISD indicates that AB 1124, as amended, will provide an opportunity for PUC to explore concepts such as single point of contact, on-bill financing repayment programs, and leveraging private capital that would enhance energy efficiency programs and expand eligibility to customers. ISD indicates that the County has contributed approximately $30.0 million in American Recovery and Reinvestment Act grant funding for Energy Upgrade California in Los Angeles County (EUCLA). EUCLA is an alliance among Los Angeles County, Southern California Edison, Southern California Gas Company, State regulatory agencies and other stakeholders targeting existing homes and other buildings within the County to make improvements that can save energy. AB 1124, if enacted, will compliment and assist County's energy efficiency efforts. ISD recommends continuing to support AB 1124, because the measure would assist and encourage local businesses and homeowners to implement energy efficiency and green energy programs. Therefore, **Sacramento advocates will continue to support the measure as amended.**

AB 1124 passed the Assembly Floor by a vote of 54 to 21 on January 26, 2012. Registered support or opposition for this measure is currently unknown.

We will continue to keep you advised.

WTF:RA
MR:VE:IGEA:sb

c: All Department Heads
Legislative Strategist